> permitting foreign carriers to operate in the **U.S. domestic market**.[145/]

The same logic again applies with equal force to international facilities-based services on unaffiliated routes. The FAC's ability to use affiliates' bottleneck facilities,

> combined with the competitive benefits of our longstanding open entry policy for **international service on unaffiliated routes**, and the administrative burden of regulating entry, to outweigh any anticompetitive effects that might occur as a result of permitting foreign carriers to operate in the **U.S. market on unaffiliated routes**.

Therefore, the Commission should at most apply any new entry test on a FAC's affiliated routes.

B. If An Entry Standard Is Adopted, The Commission Should Only Review A Foreign Carrier's Home Market

Extending the Commission's review to all of a foreign carrier's primary markets could seriously harm U.S. companies investing in foreign carriers, and could retard the privatization and development of telecommunications systems around the world. Therefore, if any new rule is adopted in this proceeding, the Commission should only examine a foreign carrier's home market.

The NPRM proposes to apply the new six-part test in all of a foreign carrier's "primary markets," which are defined as:

> those key markets where the carrier has a significant ownership interest in a facilities-based telecommunications entity that has a substantial or dominant market share of either the international or local termination telecommunications market of the country, and traffic flows between the United States and that country are significant.[146/]

145/ Id. (emphasis added).

146/ NPRM ¶ 43. All other markets in which a Foreign Carrier has an ownership interest in international facilities-based carrier would be "secondary markets."

While many of the critical terms in this formulation are quite vague, the potential application of this focus on all of a foreign carrier's primary markets is quite broad.

As explained at pages 35-36 above, if other countries copied the proposed rule, it would have a devastating effect on U.S. carriers investing abroad. For example, Canada could limit the international services of AT&T (because of its investment in the Ukraine and Venezuela) and GTE (which invests in the Dominican Republic and Venezuela).

This proposed rule could also harm development of telecommunications systems in a number of countries. For example, the Commission could conclude that TLD's "primary markets" are Spain, Argentina, Chile and Peru.[147/] Any effort to condition TLD's U.S. operations on the market conditions in Argentina, Chile or Peru would be particularly unfortunate because TI has taken substantial efforts and risks to develop the telecommunications markets in those countries.

In Chile, TI's operation of CTC has increased the number of telephone lines by 90% from 811,811 in 1990 to 1,545,074 in 1994. The switches in the CTC network are now 100% digital.

The advances in Chile's telecommunications market have stimulated its national economy and serve as a laudable model for the rest of the world. Having passed through its important development phase, Chile now has arguably the most competitive telecommunications industry in the world. There are now more than ten carriers authorized to provide facilities-based international services in Chile, including one carrier owned by Bell South, and another carrier partially owned by Bell Atlantic.

147/ This example is used for illustrative purposes only. It is not a concession that these are TI's "primary market." For example, even under the proposed rule, the Commission could conclude that traffic flows between the United States and some of these countries are not "significant," or that TI's ownership in these affiliates is not "significant."

Chile is one of the very few countries in the world that has no barriers to facilities-based entry for either international or local services.[148] While Chile might pass the Commission's six-part test today, it certainly would not have passed when it initially began its privatization by selling partial ownership to TI.

The significant problem posed by the proposed rule for developing countries is perhaps best illustrated by TI's recent investment in Peru.[149] In 1993, Peru had only 2.9 lines per 100 people, one of the lowest penetration rates in Latin America. In 1994, TI bid $1.8 billion to obtain a 31.5% share of the telephone company.[150] TI's bid was approximately $1 billion higher than the competing bids of two different consortia led by Southwestern Bell and GTE.

The value of the Peru telephone company to TI was not the existing assets it purchased in 1994. Rather, the value was in the right to develop a new modern telephone system that would serve millions of additional customers. In addition to the $1.8 billion investment, the privatized carrier, Telefónica del Peru ("TDP") is obligated to make substantial investments to improve and modernize Peru's telephone

[148] In 1994, the Commission approved Entel Chile's acquisition of 60% of Northland. See AmericaTel Order, 9 FCC Rcd 3993 (1994). In approving the transaction, the Commission noted Chile's open and competitive telecommunications market by stating: "[W]e find that there are no relevant legal restrictions on the ability of U.S. and other foreign entities to invest in the Chilean international long distance telecommunications marketplace or to obtain licenses to operate as international facilities-based long distance carriers. In addition, we do not find any provisions in Chile's laws or regulations that give Chilean-owned carriers preferential treatment vis-a-vis U.S. or foreign-owned telecommunication companies." Id. at 3999 (footnote omitted).

[149] This example is used for illustrative purposes only. It is not a concession that Peru is a primary market. For example, even under the proposed rule, the Commission could conclude that traffic flows between the United States and Peru is "significant," or that TI's ownership in this affiliate is not "significant."

[150] Initially, TI acquired a 35% interest in both the local and long distance international companies. Since that time, the two companies have merged, and TI has sold 10% of its interest to local private investors.

system. By 1998, TDP is required to install 519,060 new lines, replace 200,000 existing lines and provide 19,000 public pay telephones.

Indeed, the reason that TI's bid was so much larger than the bids of its competitors was that it had a vision of building out a new phone system much faster than the U.S. carriers did. TI is now adding 28,000 new lines per month. In a few short months, TI has already increased telephone penetration by 15%, to 3.4 lines per 100 people.

According to Morgan Grenfell, an adviser to Copri, the Peruvian privatization commission, "'[b]y all accounts, the targets that were set for installation of lines have been met and in fact have been exceeded . . . [t]hey are now pumping more lines into Peru than had been anticipated.'"[151/] For example, while TDP is contractually obligated to install 140,000 new lines in 1995, it plans to install more than twice that amount.

The Peru government is extremely pleased with the privatization to date. According to Carlos Montoya, the Executive Director of Copri, "'[w]e are very happy with the Telefónica group and we are witnesses that the service has improved and that the companies are much more efficient . . . . We believe that this constitutes a greater advantage for Peru.'"[152/]

When the Peru government established the terms of the bidding for the privatization, it offered the purchasing party a five-year exclusivity period to develop the Peru telecommunications system. Otherwise, there would have been little incentive for

[151/] Lisa Sedelnik, *CPT/Entel privatization opens lines of communication in Peru*, 64 Latin Finance 18, 20 (1994).

[152/] Id. at 20.

TI, Southwestern Bell or GTE to bid because the existing assets of the Peru telephone company did not hold much value.

During this five-year period, TI will develop the Peru telecommunications system to honor its commitments with the Peru government, extend telephone service to the Peruvian people and maximize the value of its investment. The Peru government has announced that, after the five-year exclusivity period terminates in 1999, it will permit competing carriers to enter the Peru market. Competition in the Peruvian telecommunications sector may flourish one day just as it does today in neighboring Chile.

In the meantime, the proposed rule would be extremely counter-productive. TI would be forced to choose between continuing to invest in the U.S. market or continuing to invest in the Peru market. The proposed rule would create powerful incentives against TI and other companies participating in the privatization of Peru and dozens of other countries that are currently considering privatization.

The rule would also provide U.S. carriers with an unfair advantage over TI and other foreign carriers in the bidding for future privatizations. The rule would impose significant penalties on TI for undertaking its investment in Peru, or for winning the next privatization bid. On the other hand, the rule would not impose any penalty on the competing U.S. companies for making an exclusive investment in Peru.

The Peru government also would have faced difficult choices under the proposed rule. The Peru government would have no interest in modifying its privatization effort in order to permit the winning bidder to compete in the United States. If TI had refused to participate in the privatization, then the high bid would have been $1 billion less. The Peru telecommunications infrastructure would have developed much more slowly. The exclusivity provision was necessary to attract sufficient capital to build its telecommunications infrastructure. Of course, Peru would have been extremely concerned that the proposed rule might have given U.S. bidders an unfair advantage over other competitors. Indeed, it is possible that Peru might have excluded U.S. companies from the bidding in order to create a level playing field.

In sum, the Peru example demonstrates that application of the effective market access test to all of a foreign carrier's "primary markets" would not be in the public interest for three reasons. **First**, privatization and development of telecommunications infrastructure in developing countries like Peru could be significantly retarded, which would damage their people and economies. **Second**, companies like TI could be faced with the Hobson's Choice of abandoning efforts to privatize and modernize telecommunications systems in developing countries, or withdrawing from the U.S. market. **Third**, U.S. companies seeking to participate in privatizations could be met with hostility or worse because of the effect of the proposed rule on future privatizations. To avoid these difficulties, the Commission should confine any examination of "effective market access" to a foreign carrier's home country.

C. The Effective Market Access Test Must Be Based On Planned Transitions To Competitive Environments

If the Commission adopts any rule, it must recognize that most countries will need several years to transition from their current stage of telecommunications development to a fully competitive environment. While vague, the Commission's pronouncement that "access must exist at the time of entry, or in the near future,"[153/] may not be realistic or flexible.

153/ NPRM ¶ 38

Even AT&T recognized that commitments to move to competition within two years were reasonable.[154] Similarly, the recent Economic Strategy Institute study, which advocated imposition of a market access test if the GATS negotiations fail to achieve liberalization by April 1996, also recognized that a lengthy adjustment period is necessary:

> It is unrealistic for the United States to expect its trading partners to agree to these market opening commitments without some period of adjustment. The United States should acknowledge this fact and accommodate requests for delays when justified. The time frame for meeting all commitments must not exceed, in any case, **four years** for developing countries, and in most cases should not exceed **two years** for developed and newly-industrialized countries. These time frames should take into account the condition of the country's telecom infrastructure and the initiatives undertaken by the government to deregulate their market. The United States, by offering countries enough time to deregulate completely and introduce domestic market forces, will persuade a greater number of countries to make stronger commitments.[155]

In a footnote to this passage, the ESI study states: "Based on the U.K., U.S. and Japanese deregulation programs, **six years** is more than enough time for foreign nations to corporatize, privatize, upgrade existing networks, and introduce domestic competition."[156]

The ESI study appropriately recognizes that even in the most highly developed countries, it can take six years for the necessary adjustments. Of course, even now the United Kingdom and Japan do not permit facilities-based international

[154] AT&T Petition For Rulemaking at 42.

[155] Erik R. Olbeter & Lawrence Chimerine, *Crossed Wires: How Foreign Regulations and U.S. Policies Are Holding Back the U.S. Telecommunications Services Industry* 88-89, Economic Strategy Institute 1994 (emphasis added and footnote omitted).

[156] Id. at 88 n.148 (emphasis added).

services to be provided by U.S. carriers. The ESI study also showed an appreciation that developing countries may need a longer time frame to make the desired adjustments.

Even in the United States, legislators, regulators and dozens of interested parties have debated for years how some of the issues implicated in the Commission's six-point test should be resolved. Congressional efforts to pass legislation on some of these issues, including foreign ownership, interconnection, disclosure of technical information, protection of proprietary information and regulatory reform, have been unsuccessful for many years. Even if the currently pending legislation is adopted,[157/] it would take at least several years for the Commission and carriers to implement all of these provisions.

A significant adjustment period is also necessary because funding for universal service depends on subsidies from international services in most countries. While the United States also has a cross-subsidy scheme to support local services, the subsidies are more pronounced in many other countries. Maintaining support for universal service programs is an important social and political consideration in most countries.

TLD proposes that a developed country that has announced commitments to permit U.S. firms to have international facilities-based services within three years would meet any test adopted by the Commission. Although slightly longer than the time frame proposed by AT&T, this time frame is half of the six year period for historical development of partial competition in developed countries cited by ESI. Developing countries should have the full six years suggested by the ESI study.

157/ See, e.g., Telecommunications Competition and Deregulation Act of 1995, S. 652, 104th Cong., 1st Sess. (1995).

D. The Affiliation Standard Should Not Be Rigged To Exclude MCI And Sprint

The Commission has asked for comment on whether the affiliation standard should be "greater than ten percent," "greater than twenty-five percent" or some other level.[158] Instead of focusing solely on the percentage of ownership, the Commission should also consider the size of the foreign carrier's investment in the U.S. carrier and the volume of traffic the FAC has between the United States and the home market, and the incentive for competitive abuse. Control should not be the determining factor. The size of the foreign investment and the amount of traffic the FAC sends to affiliated countries are more important factors in considering the incentives for competitive abuse, and for changes in the home country's telecommunications market.

These proposed standards run the risk of excluding the two largest (by far) investments by foreign carriers in the U.S. telecommunications market. Not coincidentally, the "greater than ten percent" standard could exclude from examination the proposed investments by FT and DT in Sprint unless the Commission looks at the investments on a cumulative basis.

TABLE 5			
CARRIER	FOREIGN INVESTMENT (Millions)	FOREIGN OWNERSHIP	MINUTES TO AFFILIATED COUNTRIES
TLD	$112	79%	1,517,754
MCI	$4,300	20%	198,186,984
SPRINT	$4,200	20%	81,466,237

158/ NPRM ¶¶ 59, 60.

Table 5 shows the foreign investment and foreign ownership for TLD, MCI and Sprint (proposed). Although the percentage of foreign ownership in TLD is almost 4 times higher in TLD than in MCI or Sprint, the value of the foreign investments in Sprint and MCI is more than **37 times** higher than TLD.

Any incentive for potential abuse is directly related to the volume of traffic sent to affiliated countries. As Table 5 shows, MCI sends more than **130 times** as much traffic to the United Kingdom as TLD sends to Spain, Argentina, Chile and Venezuela combined.[159/] Similarly, Sprint sends approximately **54 times** as much traffic to France and Germany as TLD sends to its "affiliated" countries. Since the theoretical incentive for abuse is directly related to the volume of traffic the carrier has between the United States and the affiliated countries, it is clear that any affiliation standard that covers TLD should also cover MCI and Sprint.

E. The Commission Should Not Consider Affiliates' Accounting Rates In The Context Of A Section 214 Application

The Commission properly rejected AT&T's proposal that cost-based accounting rates be a condition of entry under Section 214. The FCC has traditionally kept accounting rate and entry questions separate.[160/] However, the Commission strays from the correct path when proposing that the presence of cost-based accounting rates

159/ The "Minutes to Affiliated Countries" is based on MCI's 1993 reported § 43.61 traffic from the U.S. to the United Kingdom (Mainland traffic billed in the United States only), and Sprint's 1993 reported § 43.61 traffic from the U.S. to France and Germany (Mainland traffic billed in the United States only). The TLD traffic is 1993 traffic from Puerto Rico to Spain, Argentina, Chile and Venezuela.

160/ See AmericaTel Order, 9 FCC Rcd at 4033 (1994) ("We have previously concluded that, for now, we will rely on mechanisms other than conditioning Section 214 authorizations to encourage foreign correspondents to lower their accounting rates with U.S. carriers."); see also TLD Acquisition Order, 8 FCC Rcd at 112.

be part of the total public interest analysis to determine whether facilities-based market entry should be allowed.[161]

While adoption of cost-based accounting rates are a laudable goal, they should not be tied to entry issues because the problem posed by above-cost accounting rates is not limited to foreign carriers seeking to enter the U.S. market. There is no correlation between foreign carriers seeking entry into the U.S. market and the accounting rates used by foreign carrier's affiliates. Indeed, many countries with which the United States has the highest telecommunications deficit are countries where U.S.-based carriers operate the dominant carrier.

For example, the net settlements payment deficit with Mexico was $720 million in 1993. This amount was more than 500% higher than the deficit with any other country in the world.[162] Indeed, Mexico is one of the only countries where the accounting rate is not settled on a 50-50 basis. Of course, Southwest Bell operates Telmex, the Mexican carrier. Similarly, the fifth highest 1993 deficit, $129.5 million, was with the Dominican Republic, where the dominant carrier is owned and operated by GTE.

The proposed requirement for FACs to submit, and maintain current, the accounting rates that its correspondents on dominant routes have with all other countries is another attempt to overreach that is not directly related to FAC entry into the United States.[163] Foreign countries could insist on discriminatory accounting rates whether or not they have affiliates in the U.S. market. If the Commission believes that

161/ NPRM ¶ 42.

162/ 1993-94 Common Carrier Statistics, Table 4.11 at 207.

163/ NPRM ¶ 87.

this data is essential, then it should be required of all U.S. international facilities-based carriers, not just the FACs.[164]

IX. CONCLUSION

Chairman Hundt recently said that: "Our key goal, I think, should be to foster competition so that the price of communications, as opposed to things communicated, is driven by that competition as close to zero as economically possible."[165] He also outlined the steps needed to accomplish this goal, "[f]irst, we need to eliminate all barriers to entering anyone's business."[166] The AT&T proposal would be a false step. To foster competition, the United States should not erect barriers for FACs to enter the international facilities-based services business.

164/ Unless there is an international consensus that all countries will make their accounting rates transparent, then this approach is unlikely to work. While the FCC proposes to limit this requirement to countries a FAC serves as a dominant carrier, TLD is classified as a dominant carrier to every country in the world, including countries it serves only by IMTS resale, and countries where it has no investments at all. Even where TI has a minority investment in a carrier, it may not be able to force that carrier to disclose all of its accounting rates. For example, it is doubtful that TLD or TI could have gotten Entel-Chile to disclose all of its accounting rates when TI had a 20% interest in that company.

165/ Reed Hundt, *New Paradigm For The Digital Age,* Apr. 4, 1995 at 8 (Werthein-Schroeder Variety Conference).

166/ Id. at 9.

The Commission should not adopt the proposed rule because: (1) it lacks jurisdiction to do so; (2) the rule is unlikely to be effective in convincing foreign countries to change their telecommunications policies; (3) the current competitive safeguards have effectively prevented any competitive abuses; (4) the rule would harm competition in the U.S. market; and (5) the rule unfairly protects AT&T.

Dated: April 11, 1995

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alfred M. Mamlet, do hereby certify that a copy of the foregoing **TLD's Comments** has been sent, via first class mail, postage prepaid, (or as otherwise indicated) on this 11th day of April, 1995 to the following:

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ECONOMIC BENEFITS TO PUERTO RICO

FROM VIGOROUS

TELECOMMUNICATIONS COMPETITION

June 27, 1994

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EXECUTIVE SUMMARY

Prior to 1989, AT&T and its predecessor enjoyed a monopoly in off-island telecommunication services for Puerto Rico. However, the anticipation of and then the reality of entry by Telefonica Larga Distancia, Inc. (TLD) together with the advent of equal access led to significant declines in off-island rates. For example, Band 1 daytime rates fell 41 percent between 1986 and 1993. Today, TLD's Band 1 tariff is $0.20 per minute compared with AT&T's price of $0.27 per minute for the same service.

We estimate that the total savings to Puerto Rican consumers from post equal access competition in off-island service is at least $578 million. Since TLD is AT&T's major competitor, most of these consumer savings are attributable to TLD's entry.

By 1992, TLD had achieved a 21.6 percent market share in minutes of international calling originating in Puerto Rico, while AT&T's share had fallen to 59.9 percent. Although Sprint and MCI also serve this market, with shares of 7 percent and 6.5 percent respectively, they have not shown themselves to be nearly the competitive challenge that TLD has been to AT&T. Moreover, TLD's impressive achievement in market presence understates its important role as the only carrier with a continuing interest in serving the low volume residential and small business customer.

TLD has also been an aggressive competitor to AT&T on international routes. For example, the Dominican Republic is the most popular destination for international calls originating from Puerto Rico. After TLD's entry AT&T dropped its Band 1 daytime tariff for calls to the Dominican Republic from $0.75 per minute to $0.66 per minute but TLD's rates are even lower at $0.63 per minute.

There is no question that future Puerto Rican economic development would be bolstered by a highly competitive market for off-island telecommunications services. We estimate that a drop in tariffs by about 17 percent, such as the reduction recently made by TLD in its Band 1 daytime rate to $0.20, if adopted by all competitors would generate an increase in Puerto Rican GDP of between $19 million and $31 million. This economic boost would create between 801 and 1325 new jobs for Puerto Rico.

When a dominant firm is under competitive pressure primarily from a single rival, the strength of competition depends in large part on the strength of that rival. Regulatory actions that restrict AT&T's primary Puerto Rican rival pose serious potential threats to the health of competition for off-island services originating in Puerto Rico. FCC regulatory actions have a major effect on telecommunications competition. We have all witnessed the pro-competitive effects that deregulation in telecommunications has brought to the U.S. and to the international market place.

However, regulatory actions can also have unintended and harmful consequences for competition. For example, prohibiting TLD from participating in the AMERICAS-1 and COLUMBUS II cable systems would have seriously detrimental effects on competition because it would handicap the carrier that has been the primary competitive constraint on AT&T. We estimate that the new cable systems will provide a cost savings of about one cent per minute (about 4.4%) to TLD. The savings may even be greater for AT&T. However, the magnitude of TLD's cost savings would not be passed on to consumers by AT&T in the off-island market if TLD will not be able to place additional competitive pressure on its principal rival. Granting TLD's cable systems applications would ensure that Puerto Rican consumers will benefit from the cost reductions provided by these new cable systems. These cost reductions would amount to a $6 million annual savings for Puerto Rican customers.

The immediate regulatory concern over TLD's participation in AMERICAS-1 and COLUMBUS II has been linked to the opening up of foreign markets to U.S. carriers and to the "high" levels of foreign settlement rates. This linkage is unfounded and should prove to be costly to the Puerto Rican economy. Illusive trade policy objectives provide a bad bargain for Puerto Rican business and residential customers if they sacrifice current sizeable competitive benefits for only a potential pressure to open a foreign market to American business entry. While opportunistic protectionist rhetoric from AT&T may be colorful, the true immediate gain to AT&T if its petition is granted is that it will face significantly diminished competition in Puerto Rico.

Deregulation has worked in Puerto Rico. The benefits that derive from long-distance competition, including lower prices and higher quality services for consumers, lower costs and increased efficiency for businesses, and economic growth and employment expansion for the economy as a whole, depend on the ability of TLD to continue to act as a strong competitor to AT&T.

TABLE OF CONTENTS